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PROGRAMME BUDGET FOR THE BIENNIUM 1994-1995

Conditions of service and compensation for officials other than Secretariat officials

Pension scheme for the members of the International Court of Justice

Report of the Secretary-General

I. INTRODUCTION

1. The General Assembly, in paragraph 1 of resolution 48/252 B of 26 May 1994, invited the Secretary-General to undertake a study of the pension scheme for the members of the International Court of Justice (ICJ) (15 members) and to report thereon to the Assembly at its forty-ninth session. In paragraph 2 of the same resolution, the Assembly requested the Secretary-General to redraft the Pension Scheme Regulations for members of the Court reflecting the decisions taken by the General Assembly in its resolution 45/250 B of 21 December 1994, so as to reflect gender neutrality.

2. The present report is submitted in accordance with the above requests. In order to facilitate consideration of the issue, the report has been divided into the following sections: background; review of the pension benefit; recommendations; financial implications; and next comprehensive review.

II. BACKGROUND

3. Members of the International Court of Justice are entitled to retirement pensions in accordance with Article 32, paragraph 7, of the Statute of the Court, the specific conditions of which are governed by regulations adopted by the General Assembly. From 11 December 1963 until 1 January 1991, pensions constituted half the annual salary of a Judge who completed a full nine-year

term, with a proportional reduction for a Judge who did not complete a full term. A Judge who was re-elected received one six-hundredth of his annual salary for each further month of service, up to a maximum pension of two thirds of annual salary.

4. With the adoption of resolution 45/250, the pension entitlement was changed to a fixed amount. As from 1 January 1991, a member of the Court who has ceased to hold office, has reached the age of 60 and has served a full term of nine years is entitled to receive an annual pension benefit of $50,000, with a proportional reduction for a Judge who has not completed a full term. For a member of the Court who is re-elected, the pension entitlement is increased by an additional $250 per month for each further month of service, up to a maximum pension of $75,000 a year.

5. The text of the current Pension Scheme Regulations for members of the International Court of Justice appears in annex I to the present report. In response to the General Assembly's request, it has been redrafted so as to reflect gender neutrality.

III. REVIEW OF THE PENSION BENEFIT

6. On the occasion of the comprehensive review of the conditions of service and compensation of the members of ICJ undertaken in 1993, the question of retirement pensions of the members was considered in section VII of the Secretary-General's report (A/C.5/48/66). The report elaborated the Court's view that the pension regime in force since 1 January 1991 is unsatisfactory because, first, the current pension arrangement - $50,000 for one term of service and $75,000 for two terms - is not correlated to salaries, as are judicial and other pensions; secondly, the Court's scheme provides pensions significantly lower than those of comparator countries in which pensions are correlated with salaries (various examples were quoted pertaining to the United States of America, Canada, the Court of the European Communities, Australia and Brazil); and thirdly, the pensions of the members of the Court are paid in United States dollars irrespective of the country of retirement, with no protection against weakening of the dollar or cost-of-living fluctuations in the country of retirement/residence.

7. The report also reiterated the Court's view that the pensions of its members should be treated as sui generis, as judicial pensions were generally treated. They should be determined neither by the pension arrangements of the United Nations common system nor be a precedent for them. It was specified that, in many countries, judicial pensions were more generous than civil service pensions at large, in view of the exceptional qualifications for, and demands and inhibitions of judicial service (for example, no civil servant in the United States, even after 40 years of service, receives a pension approaching that of a federal judge after 15 years of service). The point was made whereby the pensions of retired members of the Court should take account of the high office a member of the Court has held; the age at which most members are elected; restrictions on gainful employment after retirement for reasons of propriety and age; the loss of accrual of national pension rights during the period of service of a Judge of the Court; and the standards of judicial pensions that obtain in

leading comparator countries. Further, the difference between the salary of a serving Judge and the pension (or disability allowance) of a retired Judge should not be so great as to unduly induce Judges to seek re-election or to endeavour to refrain from retirement despite disablement.

8. The conclusion reached by the Court was that the pre-1991 regime under which pensions were based on a percentage of salary should be restored. Accordingly, the Court recommended that Judges who have served a full term should receive 50 per cent of their salary and Judges who have served two full terms should receive two thirds of their salary.

9. As indicated in paragraph 1 above, the General Assembly, by its resolution 48/252, invited the Secretary-General to undertake a study of the pension scheme for the members of the Court and to report thereon to the Assembly at its forty-ninth session.

10. In response to the General Assembly's request to undertake such a study, the Secretary-General would, at the outset, recall that, in his report submitted to the Assembly at its forty-eighth session (A/C.5/48/66), information had been provided on the pension schemes in a number of national and international judiciaries.

11. On the occasion of this review, the Secretary-General deems it useful to provide a summary of pension arrangements for a variety of national judiciaries as well as the Court of the European Communities. The following information has been obtained by the Court with the assistance of a number of Missions to the United Nations:

1. United States Supreme Court

In the United States of America, federal judges at all levels receive 100 per cent of their salary on retirement, provided that they are 65 years of age on retirement and have served 15 years or are 70 years of age on retirement and have served 10 years. Surviving spouses receive a maximum pension benefit of 50 per cent; however, if a judge leaves children under the age of 22, the spouse's pension is increased by 10 per cent for one child and by 20 per cent for two or more children; the maximum pension of the spouse in that event would for a time be 70 per cent. The exact percentage of pension payable to survivors varies with the length of service of the judge; moreover, serving judges pay 5 per cent of their salary into a fund for spouses' pensions, whereas they make no contributions to their own pensions. A widow may remarry after the age of 55 without loss of pension.

2. Supreme Court of Canada

In Canada, a judge who has reached the age of retirement receives a retirement pension equal to two thirds of final salary if either
(a) retirement is at age 70 with a minimum of 10 years' service, or
(b) retirement is at age 65 with a minimum of 15 years' service. There is

mandatory retirement at age 75. The pension scheme is contributory with contributions prior to 17 February 1976 at a rate of 1.5 per cent of salary and contributions after that date at a rate of 7 per cent of salary.

3. United Kingdom of Great Britain and Northern Ireland

In the United Kingdom, a judge is entitled to receive a retirement pension equal to half of final salary after a minimum of 15 years' service.

4. Australia

In Australia, judges of the highest courts are entitled to a pension after the age of 60, equivalent to two thirds of the current salary, provided they have 10 years of service.

5. Japan

On retirement at age 70, a pension is calculated at between 60 per cent and 70 per cent of the salary level of the last month of service, the amount varying with length of Government service; in addition, a lump sum is payable on retirement. In 1992, for 10 years of service, the retiring Chief Justice would have received a lump sum of 130,020,000 yen (US$ 1,182,000); an Associate Judge, 94,860,000 yen (US$ 850,000).

6. Germany

In Germany, the pension is calculated on the basis of the judge's final remuneration. The level of the pension is determined by the period of pensionable service, every year of which entitles the judge to 1.875 per cent of pensionable remuneration up to a maximum of 75 per cent. A judge is entitled to a pension on retirement on expiry of the term of office (i.e., after 12 years or on completion of the 68th year of life or on being retired on account of permanent incapacity for service or on voluntary retirement after six years on the bench and completion of the 65th year of life; the five-year minimum period of service required by the Civil Service Act will as a rule have been attained by judges of the Federal Constitutional Court, if only on account of the inclusion of previous periods of service). As per the pension system for all civil service in Germany, the pension system for the judges is non-contributory.

In accordance with section 20 of the Civil Service Act, a widowed spouse will as a rule receive 60 per cent of the pension of the deceased, provided that the marriage had lasted at least three months and was entered into before the retirement of the deceased.

7. Court of the European Communities

In the Court of the European Communities, a retired judge receives an amount which equals 4.5 per cent of final basic salary for each full year in office and one twelfth of that amount for each complete month of service. After a judge serves one term (of six years), the pension benefit equals 27 per cent of final base salary. After a judge serves two terms (12 years), the pension benefit is equal to 54 per cent of final base salary with a maximum pension equal to 70 per cent of final base salary. The retirement age is 65.

A surviving spouse is entitled to receive a survivor's pension which is equal to 60 per cent of the pension accruing to the former member of the Court. Upon remarriage, a surviving spouse is entitled to payment of a lump sum equal to twice the annual amount of her/his survivor's pension.

8. Brazil

In Brazil, the pension of a judge on retirement, which is compulsory at age 70, corresponds to the full salary in activity. A surviving spouse is entitled to receive half the amount.

9. Netherlands

In the Netherlands, the retirement age for a judge is 70. The pension is calculated based on the average of the judge's last two years' remuneration. The level of the pension is determined by the period of pensionable service, every year of which entitles the judge to 1.75 per cent of pensionable remuneration up to a maximum of 70 per cent, which is based on 40 years of service. The pension scheme is contributory at a rate of 8.65 per cent of salary.

The pension for surviving spouses amounts to five sevenths of the old age retirement pension which would have been achieved if the deceased had continued working.

12. Based on the above information, the Secretary-General would conclude that the pension benefits in many national and international judiciaries are established by direct reference to annual salaries in that profession rather than by general reference to civil service emoluments.

13. On the occasion of the 1993 review of the question of pensions for the members of ICJ, mention was made that the members of the Court do not enjoy the lump-sum option which is in force for members of the United Nations Joint Staff Pension Fund (UNJSPF), nor do retired judges have the protection against inflation or currency fluctuation generally available in pension fund arrangements.

14. With regard to surviving spouses, the members of the Court made the observation that, in some national judiciaries and in so far as the executive

heads of the organizations of the United Nations common system may be concerned, surviving spouses receive a pension equal to 60 per cent of the spouse's pension. The Court expressed its view that the same provision should be extended to surviving spouses of its members. The Secretary-General concurred with this view.

15. The members of the Court had also noted that, in the United Nations pension system, in the case that a surviving spouse remarries, that spouse is paid a lump sum equal to twice the amount of the spouse's current annual benefit, as a final settlement. The Court requested that this provision be extended to its members. The Secretary-General also indicated that he had no objection to this request.

16. In its review of the Secretary-General's proposals concerning the question of pensions for the members of ICJ, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) recalled, in its report (A/48/7/Add.6), the fact that in its last review of the conditions of service of the judges, which took place in December 1990, it had recommended a significant increase in the annual salary of the members of the Court (from $101,750 to $145,000). In order to avoid a disproportionate increase in pension, the Committee recommended that the pensions of the Judges should no longer be expressed as a percentage of salary and should rather be set at $50,000 a year (a 22 per cent increase over the previous amount of $41,000). Consequently, ACABQ believed that, at that point in time, it was not necessary to recommend a change in the pension entitlements of the members of the Court.

IV. RECOMMENDATIONS

17. Based on his review, the Secretary-General would make the following recommendations vis-à-vis the pension benefit for the members of the Court:

(a) The annual retirement pension upon completion of one term should be based on 50 per cent of the annual salary. The current annual salary of $145,000 would yield an annual pension of $72,500. There would continue to be a proportional reduction for a Judge who did not complete a full term. For a member of the Court who is re-elected, the pension entitlement would increase by one three-hundredths of the pension payable to a one-term Judge (50 per cent of the annual salary) for each further month of service, up to a maximum pension of two thirds of the annual salary ($96,600). Judges who have already retired would, as in the past, receive a proportional increase in their pensions;

(b) The surviving spouse's benefit should be established at 60 per cent of the deceased spouse's retirement pension;

(c) A lump-sum benefit equal to twice the amount of the spouse's current annual benefit should be established, as a final settlement, for a spouse who remarries.

18. However, in order to avoid a disproportionate increase in pension, the Secretary-General would propose that the recommendation to base the retirement pension at 50 per cent of the annual salary be implemented in two stages; half

to come into force as of 1 January 1995 and half as of 1 January 1997. Therefore, he would recommend that, with effect from 1 January 1995, the pension benefit be increased from $50,000 to $61,250 and that, effective 1 January 1997, the retirement pension be set at 50 per cent of the annual salary.

Table 1. Percentage increase in level of pension benefits

Amount of annual pension (United States dollars)		
From	To	Percentage increase
50 000	61 250	22.5
50 000	72 500	45.0
61 250	72 500	18.4

19. Should the proposals presented above with regard to pensions be accepted, the Secretary-General would propose also that the Pension Scheme Regulations for members of the International Court of Justice be amended as indicated in annexes II and III to the present report.

V. FINANCIAL IMPLICATIONS

20. In summary, should the General Assembly approve the proposals contained in paragraphs 17 and 18 above, the financial implications of the changes proposed in the compensation and conditions of service of the members of the Court are estimated at $427,100 for the biennium 1994-1995, as follows:

Table 2. Financial implications, 1994-1995

	United States dollars
Pensions - paragraph 18	91 300
Compensation for survivors - paragraph 18	138 000
Compensation for survivors - paragraph 17 (b)	197 800
Compensation for survivors - paragraph 17 (c)	a/
TOTAL	427 100

a/ No financial implication of this proposal is estimated at this time.

21. As indicated above, should the proposals of the Secretary-General be approved, the additional requirements for implementation would be $427,100.

22. Under the procedure approved by the General Assembly in paragraph 11 of annex I to General Assembly resolution 41/213 of 19 December 1986, requirements relating to inflation should be treated outside the procedures related to the contingency fund. The Secretary-General is of the view that the estimated requirements of $427,100 arise from inflationary factors and should therefore be treated in accordance with established procedures and under the relevant provisions of the Financial Regulations and Rules of the United Nations.

VI. NEXT COMPREHENSIVE REVIEW

23. In accordance with the decision taken at the forty-eighth session of the General Assembly 1/ in respect of the emoluments and other conditions of service of the members of the Court, the next comprehensive review of the conditions of service and compensation by the Assembly will be undertaken at its fiftieth session in 1995.

Notes

1/ See paragraph 6 of resolution 48/252 A.

ANNEX I

Pension Scheme Regulations for Members of the International Court of Justice

Article I. Retirement Pension

1. A Member of the International Court of Justice who has ceased to hold office and who has reached the age of 60 shall be entitled during the remainder of his/her life, subject to paragraph 4 below, to a retirement pension, payable monthly provided that he/she has:

(a) Completed at least three years of service;

(b) Not been required to relinquish his/her appointment under Article 18 of the Statute of the Court for reasons other than the state of his/her health.

2. The amount of the retirement pension shall be determined as follows:

(a) If the Member has served a full term of nine years, the amount of the annual pension shall be $50,000;

(b) If he/she has served for more than nine years, the amount of the pension shall be increased by $250 for each month of service in excess of nine years, provided that the maximum retirement pension shall not exceed $75,000;

(c) If he/she has served for less than a full term of nine years, the amount of the pension shall be that proportion of the annual pension which the number of months of his/her actual service bears to 108.

3. A Member who ceases to hold office before the age of 60 and who would be entitled to a retirement pension when he/she reached that age may elect to receive a pension from any date after the date on which he/she ceases to hold office. Should he/she so elect, the amount of such pension shall be that amount which has the same actuarial value as the retirement pension which would have been paid to him/her at the age of 60.

4. No retirement pension shall be payable to a former Member who has been re-elected to office until he/she again ceases to hold office. At that time, the amount of his/her pension shall be calculated in accordance with paragraph 2 above on the basis of his/her total period of service and shall be subject to a reduction equal in actuarial value to the amount of any retirement pension paid to him/her before he/she reached the age of 60.

Article II. Disability Pension

1. A Member found by the Court to be unable to perform his/her duties because of permanent ill-health or disability shall be entitled upon leaving office to a disability pension payable monthly.

2. The amount of the disability pension shall be equal to the amount of the retirement pension which would have been payable to the Member of the Court concerned had he/she, at the time of leaving office, completed the term for which he/she had been elected, provided that it shall not be less than one half of the annual pension.

Article III. Surviving Spouse's Pension

1. Upon the death of a married Member, his/her surviving spouse shall be entitled to a surviving spouse's pension amounting to one half of the pension which he/she would have received had he/she become entitled to a disability pension at the time of his/her death, provided that the surviving spouse's pension shall not be less than one third of the annual pension.

2. Upon the death of a married former Member who was in receipt of a disability pension, his/her surviving spouse, provided he/she was his/her spouse at the date his/her service ended, shall be entitled to a surviving spouse's pension amounting to one half of the pension which his/her spouse was receiving, provided that the surviving spouse's pension shall not be less than one third of the annual pension.

3. Upon the death of a married former Member who was entitled to a retirement pension, his/her surviving spouse, provided he/she was his/her spouse at the date his/her service ended, shall be entitled to a surviving spouse's pension calculated as follows:

(a) If the former Member had not begun, at the date of his/her death, to receive his/her retirement pension, the surviving spouse's pension shall amount to one half of the pension which would have been payable to him/her under Article I, paragraph 3, had he/she commenced to receive such pension on the date of his/her death, provided that the surviving spouse's pension shall not be less than one sixth of the annual pension;

(b) If the former Member had begun to receive his/her retirement pension, under Article I, paragraph 3, before he/she reached the age of 60, the surviving spouse's pension shall amount to one half of the amount of such pension, but shall not be less than one sixth of the annual pension;

(c) If the former Member had reached the age of 60 when he/she began to receive his/her retirement pension, the surviving spouse's pension shall amount to one half of his/her retirement pension, but shall not be less than one third of the annual pension.

4. A surviving spouse's pension shall cease on his/her remarriage.

Article IV. Child's Benefit

1. Each child or legally adopted child of a Member or former Member who dies shall be entitled, while unmarried and under the age of 21, to a benefit calculated as follows:

(a) Where there is a surviving spouse entitled to a pension under Article III, the annual amount of the child's benefit shall be:

(i) Ten per cent of the retirement pension which the former Member was receiving; or

(ii) If the former Member had not begun, at the date of his/her death, to receive his/her retirement pension, 10 per cent of the pension which would have been payable to him/her under Article I, paragraph 3, had he/she commenced to receive such pension at the date of his/her death; or

(iii) In the case of the death of a Member in office, 10 per cent of the pension which he/she would have received had he/she qualified for a disability pension at the date of his/her death;

provided, in all cases, that the amount of the child's benefit shall not exceed one eighteenth of the annual pension;

(b) Where there is no surviving spouse entitled to a pension under Article III, or where the surviving spouse dies, the total amount of the children's benefits payable under subparagraph (a) above shall be increased by the following amount:

(i) If there is only one eligible child, by one half of the amount of the pension which was being paid or would have been paid to the surviving spouse;

(ii) If there are two or more eligible children, by the amount of the pension which was being paid or would have been paid to the surviving spouse;

(c) The total children's benefits payable under subparagraph (b) above shall be divided equally among all the eligible children to determine the amount of any one child's benefit; as and when a child ceases to be eligible, the total benefit payable to the remainder shall be recalculated in accordance with subparagraph (b).

2. The total amount of children's benefit, when added to the amount of any surviving spouse's benefit in payment, shall not exceed the pension which the former Member or Member received or would have received.

3. The age-limit mentioned in paragraph 1 above shall be waived if the child is incapacitated by illness or injury, and the benefit shall continue to be paid for as long as the child remains incapacitated.

Article V. Definitions

1. "Member" means either the President, the Vice-President or a Member of the Court in office.

2. "Annual salary" means the annual salary, exclusive of any allowances, fixed by the General Assembly and received by the Member at the time he/she ceased to hold office.

Article VI. Miscellaneous Provisions

1. Pensions provided for by the present Regulations shall be calculated in terms of the currency in which the salary of the Member concerned has been fixed by the General Assembly.

2. All pensions provided for by these Regulations shall be regarded as expenses of the Court, within the meaning of Article 33 of the Statute of the Court.

3. The President of the Court and the Secretary-General shall determine conditions for the application of Article IV, paragraph 3, and, on the advice of a qualified actuary or actuaries, establish a table of actuarial reduction factors.

Article VII. Application and Effective Date

1. The present Regulations shall be applicable as from 1 January 1991 to all who are Members of the Court on or after that date, to their eligible beneficiaries and to recipients of pensions or benefits under Article III or IV of the Regulations adopted on 19 December 1967 as subsequently amended by General Assembly resolution 38/239 of 20 December 1983.

2. Pensions in payment shall be automatically revised by the same percentage and at the same date as pension entitlements.

3. Former Members of the Court who left office prior to 1 January 1968, or their eligible beneficiaries, shall continue to have their entitlements governed by the Regulations approved in General Assembly resolution 1562 (XV) or 1925 (XVIII), except that in their case the revised provisions of Article III approved in General Assembly resolution 2367 (XXII) and the consequential changes in Article IV shall continue to be applicable to all relevant entitlements regardless of the date on which the said entitlements first became payable.

ANNEX II

Proposed amendments to the Pension Scheme Regulations for Members of the International Court of Justice with effect as from 1 January 1995

Article I. Retirement Pension

In paragraph 2 (a), replace "$50,000" by "$61,250".

In paragraph 2 (b), replace "$75,000" by "$85,850".

Article III. Surviving Spouse's Pension

In paragraphs 1, 2, and 3 (a) and (b), replace "one half" by "60 per cent".

In paragraph 4, replace "A surviving spouse's pension shall cease on his/her remarriage" by "A lump sum in the amount of twice the annual rate of the benefit shall be payable to a surviving spouse upon remarriage, at which time the surviving spouse's pension shall cease".

Article VII. Application and Effective Date

In paragraph 1, replace "1 January 1991" by "1 January 1995".

ANNEX III

Proposed amendments to the Pension Scheme Regulations for Members of the International Court of Justice with effect as from 1 January 1997

Article I. Retirement Pension

In paragraph 2 (a), replace "$61,250" by "50 per cent of the annual salary". a/

In paragraph 2 (b), replace "$85,850" by "two thirds of his/her annual salary". b/

Article VII. Application and Effective Date

In paragraph 1, replace "1 January 1995" by "1 January 1997".

Notes

a/ I.e., $72,500.

b/ I.e., $96,600.